

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Adip Vora	Team: Squad #1	CCRB Case #: 202006325	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 09/05/2020 5:05 PM	Location of Incident: Church of the Holy Trinity	Precinct: 19	18 Mo. SOL 3/5/2022	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 09/15/2020 12:00 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Fri, 09/18/2020 12:41 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Omar Ibrahim	22199	963075	019 PCT
2. POM Christopher Milliner	4179	967609	019 PCT
3. SGT Richard Hornberger	05084	947085	019 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Chris Krutzler	05565	952952	019 PCT
2. POF Cassie Anderson	17315	968236	019 PCT
3. POM Shaddad Salem	19703	966828	019 PCT
4. POF Marilyn Reyes	19011	968089	019 PCT
5. POF Edith Gomez	20047	967896	019 PCT
6. POM Harley Greco	10322	965154	019 PCT
7. POM Tyler Barbour	08933	963392	019 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Omar Ibrahim	Force: Police Officer Omar Ibrahim used physical force against § 87(2)(b)	
B. PO Omar Ibrahim	Force: Police Officer Omar Ibrahim hit § 87(2)(b) against a fence.	
C. PO Omar Ibrahim	Discourtesy: Police Officer Omar Ibrahim spoke discourteously to § 87(2)(b)	
D. PO Omar Ibrahim	Discourtesy: Police Officer Omar Ibrahim spoke discourteously to § 87(2)(b)	
E. PO Omar Ibrahim	Abuse: Police Officer Omar Ibrahim threatened § 87(2)(b) with the use of force.	
F. POM Christopher Milliner	Abuse: Police Officer Christopher Milliner threatened § 87(2)(b) with the use of force.	
G. SGT Richard Hornberger	Abuse: Sergeant Richard Hornberger forcibly removed § 87(2)(b) to the hospital.	

### Case Summary

On September 15, 2020, § 87(2)(b) filed this complaint in person at the 19<sup>th</sup> Precinct Stationhouse. On September 18, 2020, it was received at the CCRB.

On September 5, 2020, at approximately 5:05pm, in the vicinity of 316 East 88<sup>th</sup> Street in Manhattan (Church of the Holy Trinity), Police Officer Omar Ibrahim and Police Officer Cassie Anderson, of the 19<sup>th</sup> Precinct, approached § 87(2)(b). PO Ibrahim pushed § 87(2)(b) against a fence, then grabbed his head and slammed it against the fence (**Allegation A: Force – § 87(2)(g)** and **Allegation B: Force – § 87(2)(g)**). PO Ibrahim spoke discourteously to § 87(2)(b) (**Allegation C: Discourtesy – § 87(2)(g)**; **Allegation D: Discourtesy – § 87(2)(g)**). PO Ibrahim threatened § 87(2)(b) with the use of force (**Allegation E: Abuse of Authority – § 87(2)(g)**). Police Officer Christopher Milliner, of the 19<sup>th</sup> Precinct, threatened § 87(2)(b) with his taser (**Allegation F: Abuse of Authority – § 87(2)(g)**). § 87(2)(b) was arrested, and Sergeant Richard Hornberger had him removed to the hospital (**Allegation G: Abuse of Authority – § 87(2)(g)**).

BWC footage was obtained from PO Ibrahim, PO Anderson, PO Milliner, PO Shaddad Salem, PO Marilyn Reyes, Sgt. Hornberger, PO Edith Gomez, PO Harley Greco, and PO Tyler Barbour (**Board Reviews 01-16**).

### Findings and Recommendations

**Allegation (A) Force: Police Officer Omar Ibrahim used physical force against § 87(2)(b).**

**Allegation (B) Force: Police Officer Omar Ibrahim hit § 87(2)(b) against a fence.** § 87(2)(b) testified that, immediately prior to this incident, he was involved in an altercation with a waiter outside a bar, during which § 87(2)(b) flipped over three outdoor tables (**Board Review 17**). § 87(2)(b) walked over to the Church of the Holy Trinity, and PO Ibrahim and PO Anderson approached him. § 87(2)(b) assumed they were approaching him to arrest him, put his hands up, and said, “I did it, I did it, I don’t want any trouble.” PO Ibrahim grabbed § 87(2)(b) by his backpack and slammed him against a fence, and asked him, “where’s the weapon.” § 87(2)(b) asked PO Ibrahim why he was doing this, and PO Ibrahim grabbed § 87(2)(b)’s head and slammed it against the fence. § 87(2)(b) turned his head, and PO Ibrahim grabbed it and smashed it into the fence approximately four times. § 87(2)(b) was not handcuffed at the time, and PO Ibrahim was not attempting to handcuff him. As a result, § 87(2)(b) suffered a cut to his left ear, swelling to the left side of his forehead, and numbing which impaired his speech.

PO Ibrahim testified that he and PO Anderson received a radio run stating that an individual had menaced patrons with a knife at “The Gaf” bar on 2<sup>nd</sup> Avenue and East 88<sup>th</sup> Street in Manhattan (**Board Review 18**). The bartender pointed out § 87(2)(b) around the corner and down the street on East 88<sup>th</sup> Street. PO Ibrahim and PO Anderson then approached § 87(2)(b) approximately half a block away. § 87(2)(b) did not have a knife in his hand at the time. As PO Ibrahim approached him, § 87(2)(b) said to PO Ibrahim, “you know what?” and scratched PO Ibrahim on his left wrist with his nails. PO Ibrahim told § 87(2)(b) to put his hands on a fence nearby. § 87(2)(b) grabbed PO Ibrahim’s arm and scratched him. PO Ibrahim and PO Anderson both grabbed § 87(2)(b) by the arms and pushed him against the fence, and § 87(2)(b) pushed his body weight away from the fence. PO Ibrahim held him against the fence. PO Ibrahim only pushed § 87(2)(b) against the fence and never intentionally took § 87(2)(b)’s head and hit it against the fence. PO Ibrahim observed a laceration on § 87(2)(b)’s face in a photo after the incident but did not recall observing the laceration during the incident.

PO Anderson testified that they received a radio run regarding an emotionally distressed person with a knife, who had been flipping over tables (**Board Review 19**). PO Anderson spoke with individuals in the area who said that § 87(2)(b) was wearing a striped shirt and black pants and pointed him out down the block. PO Anderson and PO Ibrahim then approached § 87(2)(b) who matched the clothing description, approximately half a block away. PO Anderson and PO Ibrahim told § 87(2)(b) to stand against a gate nearby and place his hands behind his back. § 87(2)(b) tensed his body and resisted, and at some point, he scratched PO Ibrahim. PO Anderson stood on § 87(2)(b)'s right side and held his right arm. PO Anderson did not recall § 87(2)(b) hitting his head against a fence at any point during this struggle. She did not recall observing any injuries on § 87(2)(b).

PO Ibrahim's BWC footage from 00:41 of the video player's timestamp captures an individual flagging down PO Ibrahim and PO Ibrahim asking him, "where is he?" (**Board Review 01**). The individual tells PO Ibrahim, "He's right there, he's standing in the middle of the block right there. In his left front pocket, he has a yellow boxcutter in it." PO Ibrahim asks PO Anderson, "which guy?" and PO Anderson responds, "black and white shirt." At 01:38, PO Ibrahim tells § 87(2)(b) to put his hands on the fence. § 87(2)(b) has a cigarette in his right hand and walks towards the fence. At 01:48, the footage captures § 87(2)(b)'s right hand holding onto the fence and chest facing the fence. Then he turns his body to the left and back toward PO Ibrahim and his left arm is lifted to approximately shoulder height away from the fence. There appears to be some amount of struggle, but the footage does not capture § 87(2)(b)'s head or hands at that time. At 01:57, § 87(2)(b) says, "you bust my head into the gate."

PO Anderson's BWC footage at 00:32 captures PO Anderson pointing out § 87(2)(b) (**Board Review 02**). § 87(2)(b) does not appear to have any apparent injuries when PO Anderson and PO Ibrahim first approach him. At 00:45, § 87(2)(b) puts his left hand on the gate, then takes it off the gate while PO Ibrahim takes a bookbag from § 87(2)(b)'s left shoulder. § 87(2)(b) does not return his hand to the gate and appears to turn towards PO Ibrahim. The footage from 00:50 to 00:56 captures § 87(2)(b)'s torso off the fence while still holding on to it with his right hand. The officers each give multiple orders telling § 87(2)(b) to put his hand on the gate. § 87(2)(b)'s left hand is obscured by his body until 00:56 when § 87(2)(b)'s left arm is captured going through the bars of the fence. PO Anderson tells § 87(2)(b) to stop moving at 00:57, and at 00:58, § 87(2)(b) again moves off from the fence while still holding on to it and is moved back into it. From 01:03 to 01:17, § 87(2)(b) continues to grip the fence for about ten seconds after an officer tells him to let go and to relax. The footage does not capture § 87(2)(b)'s head during the apprehension.

PO Gomez's BWC footage from 01:00 captures § 87(2)(b)'s injuries while he is still against the fence – he is bleeding from his left ear and upper lip (**Board Review 07**).

A Threat, Resistance, and Injury Report regarding the incident was received from the NYPD (**Board Review 21**). The report states that PO Ibrahim was responding to a 911 call of a violent, highly intoxicated emotionally disturbed person (EDP) who was threatening others with a knife. The 911 caller pointed out § 87(2)(b) as the EDP, and when officers attempted to apprehend § 87(2)(b) he resisted arrest by flailing his body, turning around, and grabbing/scratching PO Ibrahim on the right arm. § 87(2)(b) refused vocal commands and did not comply with commands to put his hands on the fence. PO Ibrahim wrestled/grappled with § 87(2)(b) and pushed him against a metal fence causing him to strike his face on the fence and causing minor lacerations to § 87(2)(b)'s upper lip and left ear.

The complaint report (UF-61) associated with the arrest of § 87(2)(b) indicates that the complainant called officers because § 87(2)(b) displayed a box cutter to him while they were having a dispute (**Board Review 22**).

Entries in the 19<sup>th</sup> Precinct's Resource Recap Log for Job # § 87(2)(b) confirms that officers responded to a 911 call about an EDP with a weapon (**Board Review 23**).

According to Patrol Guide Procedure 221-02, officers are required to use only the reasonable amount of force necessary to gain compliance from a subject (**Board Review 25**).

Patrol Guide Procedure 221-01 states that members of service must consider the following factors, among others, in determining whether the use of force is reasonable: (i) the nature and severity of the crime; (ii) actions taken by the subject; (iii) immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders; (iv) whether the subject is actively resisting custody; (v) subject under the influence of a narcotic which would increase the likelihood of violence (**Board Review 24**).

It is undisputed that PO Ibrahim pushed § 87(2)(b) against the fence. PO Ibrahim's and Anderson's BWC footage are consistent with PO Ibrahim's testimony that § 87(2)(b) pushed away from the fence. § 87(2)(g) officers responded to a call about an EDP with a knife who threatened a bystander and the complainant pointed out § 87(2)(b) that § 87(2)(b) did not keep his hands on the fence, and § 87(2)(b) actively resisted custody by attempting to move away from the fence while being apprehended, § 87(2)(g)

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§ 87(2)(b) § 87(2)(g)

§ 87(2)(g) it is undisputed that § 87(2)(b) incurred injuries to his head as a result of his apprehension, § 87(2)(g)

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

**Allegation (C) Discourtesy: Police Officer Omar Ibrahim spoke discourteously to § 87(2)(b).**

**Allegation (D) Discourtesy: Police Officer Omar Ibrahim spoke discourteously to § 87(2)(b).**

**Allegation (E) Abuse of Authority: Police Officer Omar Ibrahim threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) did not make any allegations of discourtesy or a threat of force. These allegations were captured on BWC.

PO Ibrahim's BWC footage starting from 01:37 of the video player's timestamp captures PO Ibrahim saying, "put your hands on the fucking fence" (**Board Review 01**). § 87(2)(b) says, "okay, but don't say fucking," and PO Ibrahim replies, "I don't give a shit. Take your fucking thing off" (in reference to § 87(2)(b)'s backpack). § 87(2)(b) turns to PO Ibrahim and says, "you know what? Don't fucking get nasty with me," and PO Ibrahim replies "put your hand on the fucking gate and don't fucking move." At 01:56, PO Ibrahim says "fuck you. § 87(2)(b) says, "you bust my head into the gate." PO Ibrahim responds, "I'll fucking bust your head."

PO Ibrahim acknowledged making these statements and testified that he made those statements due to the heat of the moment and did not mean to, and that his knowledge that § 87(2)(b) was potentially armed, that § 87(2)(b) scratched him, and § 87(2)(b) resisting arrest contributed to him making those statements (**Board Review 18**).

Per NYPD Patrol Guide Procedure 200-02, officers are expected to maintain a higher standard of integrity than is generally expected of others, respect the dignity of each individual, and render services with courtesy and civility (**Board Review 34**).

Per DAO-DCT Case 2017-17276, officers may use language which would ordinarily be inappropriate with civilians during a violent confrontation. An officer was found not to have committed misconduct when he cursed at a resisting civilian and in the context of gaining compliance with a lawful order (**Board Review 26**).

Per DAO-DCT Case 2018-18951, officers may not use unprofessional language or language designed to demean someone (**Board Review 27**).

Patrol Guide Procedure 221-01 states that members of service must use de-escalation techniques to safely gain voluntary compliance to reduce the necessity of force (**Board Review 24**).

According to Patrol Guide Procedure 221-02, officers are required to use only the reasonable amount of force necessary to gain compliance from a subject (**Board Review 25**).

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**Allegation (F) Abuse of Authority: Police Officer Christopher Milliner threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) did not allege that PO Milliner threatened him with the use of force. However, PO Gomez's BWC footage at 00:30 captures PO Milliner with a taser in his left hand before § 87(2)(b) is handcuffed by PO Salem at 00:44 (**Board Review 07**). PO Ibrahim's BWC footage from 02:07 to 02:12 captures the sound of a taser cycling (**Board Review 01**).

PO Milliner testified that he and PO Salem received a radio run for an individual with a knife at the incident location (**Board Review 20**). Upon arriving on scene, PO Milliner observed PO Ibrahim attempting to restrain § 87(2)(b). § 87(2)(b) was physically resisting being restrained, but PO Milliner did not recall what § 87(2)(b) was specifically doing. PO Milliner approached them and assisted in restraining § 87(2)(b) by placing his hand on § 87(2)(b).

§ 87(2)(b)'s arm. § 87(2)(b) stopped resisting shortly after he and his partner arrived and complied with being handcuffed. Upon being shown PO Gomez's BWC footage, PO Milliner acknowledged drawing his taser momentarily and testified that he did so in order to ready his taser, as § 87(2)(b) was physically resisting at the time and PO Milliner was informed that § 87(2)(b) might be in possession of a knife. PO Milliner did not deploy his taser and did not recall whether he sparked it.

Sgt. Hornberger testified that PO Milliner drew his taser and sparked it during the struggle to handcuff § 87(2)(b) (**Board Review 33**).

Patrol Guide Procedure 221-08 authorizes officers to use their tasers against persons who are actively resisting arrest, considering the totality of the circumstances (**Board Review 28**).

Due to corroborating NYPD documentation, the investigation credits that PO Milliner approached the incident under the belief that § 87(2)(b) was in possession of a knife. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (G) Abuse of Authority: Sergeant Richard Hornberger forcibly removed § 87(2)(b) to the hospital.**

§ 87(2)(b) testified that he was transported to § 87(2)(b) Hospital and that he requested to be taken to § 87(2)(b) Hospital during the transport (**Board Review 17**). He did not allege that he was removed to the hospital against his will. § 87(2)(b) stated that medical personnel administered him a sedative at the hospital to calm him down.

PO Milliner's BWC footage at 08:47 captures § 87(2)(b) telling officers that he did not need to go to the hospital, then saying "yes I do," after a brief pause (**Board Review 04**). PO Milliner asks § 87(2)(b) if he was drinking, and § 87(2)(b) responds that he had a little bit to drink. At 10:58, § 87(2)(b) says that he wants to get arrested instead of going to the hospital. § 87(2)(b) repeats that statement multiple times until the end of PO Milliner's footage at 11:34. § 87(2)(b)'s speech was slurred throughout the entire conversation.

Sgt. Hornberger testified that he made the decision to call an ambulance for § 87(2)(b) as § 87(2)(b) appeared intoxicated (**Board Review 33**). § 87(2)(b) was slurring his speech, smelled like alcohol, and mentioned drinking at a bar earlier.

Patrol Guide Procedure 221-13 defines an emotionally disturbed person as a person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others. It further directs officers to have emotionally disturbed people removed to the hospital via ambulance once they are restrained (**Board Review 29**).

Given that officers were responding to a 911 call about an EDP who was menacing others with a weapon, § 87(2)(b) told officers that he had a little bit to drink, and § 87(2)(b)'s speech was slurred during his entire interaction with officers, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 30**).
- PO Ibrahim has been a member-of-service for five years and has been named as a subject in four other CCRB complaints and 10 allegations, none of which were substantiated.
- PO Milliner has been a member-of-service for two years and this is the first CCRB complaint to which he has been a subject. § 87(2)(g)
- Sgt. Hornberger has been a member-of-service for 13 years and has been a subject in two other CCRB complaints and two allegations, neither of which were substantiated. § 87(2)(g)

#### **Mediation, Civil, and Criminal Histories**

- This complaint was unsuitable for mediation.
- As of March 16, 2022, the New York City Comptroller's Office has no record of a Notice of Claim being filed in regard to this incident (**Board Review 32**).
- § 87(2)(b)

Squad: 1

Investigator:	<u>Inv. Adip Vora</u> Signature	<u>Inv. Adip Vora</u> Print Title & Name	<u>03/18/2022</u> Date
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Squad Leader:	<u>Mgr. Joy Almeyda</u> Signature	<u></u> Print Title & Name	<u>3.19.22</u> Date
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Reviewer:	<u></u> Signature	<u></u> Print Title & Name	<u></u> Date
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